

## Summary of Federal and State Applicable or Relevant and Appropriate Requirements (ARARs) OU3 Rainy Creek Floodplain Removal Action - Libby Asbestos NPL Site

### I. INTRODUCTION

40 CFR 300.415(j) provides that removal actions under CERCLA attain, to the extent practicable considering the exigencies of the situation, all state and federal applicable or relevant and appropriate requirements (ARARs). In considering whether compliance with ARARs is practicable, EPA will consider the urgency of the situation and the scope of the removal action being conducted.<sup>1</sup>

This document identifies potential ARARs for the OU3 Rainy Creek Floodplain removal action to be conducted at the Libby Asbestos National Priorities List Site. The following ARARs or groups of related ARARs are each identified by a statutory or regulatory citation, followed by a brief explanation of the ARAR and how and to what extent the ARAR is expected to apply to the activities to be conducted under this removal action. The final work plan for the OU3 Rainy Creek Floodplain removal action will identify ARARs specific to this removal action.

Substantive provisions of the requirements listed below are identified as ARARs pursuant to 40 CFR § 300.400. ARARs must be attained during and at the completion of the removal action.<sup>2</sup> No Federal, State or local permit shall be required for the portion of any removal action conducted entirely on site in accordance with Section 121(e) of CERCLA, 42 U.S.C. § 9621(e).

### II. TYPES OF ARARs

ARARs are either "applicable" or "relevant and appropriate." Both types of requirements are mandatory under the NCP.<sup>3</sup> Applicable requirements are those cleanup standards, standards of control, and other substantive requirements, criteria or limitations promulgated under federal environmental or state environmental and facility siting laws that specifically address a hazardous substance, pollutant, contaminant, removal action, location, or other circumstance found at a CERCLA site. Only those state standards that are identified by a state in a timely manner and that are more stringent than federal requirements may be applicable.<sup>4</sup>

Relevant and appropriate requirements are those cleanup standards, standards of control, and other substantive requirements, criteria or limitations promulgated under federal environmental or state environmental or facility siting laws that, while not "applicable" to hazardous substances, pollutants, contaminants, locations, or other circumstances at a CERCLA site, address problems or situations sufficiently similar to

---

<sup>1</sup> 40 CFR § 300.415(i)(1) and (2).

<sup>2</sup> Preamble to the National Oil and Hazardous Substances Pollution Contingency Plan, 55 Federal Register (FR) 8695 (March 8, 1990).

<sup>3</sup> CERCLA § 121(d)(2)(A), 42 U.S.C. § 9621(d)(2)(A). See also, 40 CFR § 300.430(f)(1)(i)(A). Note that that these references apply to remedial actions.

<sup>4</sup> 40 CFR § 300.5.



those encountered at the CERCLA site that their use is well suited to the particular site. Only those state standards that are identified in a timely manner and are more stringent than federal requirements may be relevant and appropriate.<sup>5</sup>

The determination that a requirement is relevant and appropriate is a two-step process: (1) determination if a requirement is relevant and (2) determination if a requirement is appropriate. In general, this involves a comparison of a number of site-specific factors, including an examination of the purpose of the requirement and the purpose of the proposed CERCLA action; the medium and substances regulated by the requirement and the proposed action; the actions or activities regulated by the requirement and the removal action; and the potential use of resources addressed in the requirement and the removal action. When the analysis results in a determination that a requirement is both relevant and appropriate, such a requirement must be complied with to the same degree as if it were applicable.<sup>6</sup>

ARARs are contaminant, location, or action specific. Contaminant specific requirements address chemical or physical characteristics of compounds or substances on sites. These values establish acceptable amounts or concentrations of chemicals which may be found in or discharged to the ambient environment.

Location specific requirements are restrictions placed upon the concentrations of hazardous substances or the conduct of cleanup activities because they are in specific locations. Location specific ARARs relate to the geographical or physical positions of sites, rather than to the nature of contaminants at sites. Action specific requirements are usually technology based or activity based requirements or limitations on actions taken with respect to hazardous substances, pollutants, or contaminants. A given cleanup activity will trigger an action specific requirement. Such requirements do not themselves determine the cleanup alternative, but define how chosen cleanup methods should be performed.

Many requirements listed as ARARs are promulgated as identical or near identical requirements in both federal and state law, usually pursuant to delegated environmental programs administered by EPA and the state. The Preamble to the NCP provides that such a situation results in citation to the state provision and treatment of the provision as a federal requirement.

Also contained in this list are policies, guidance or other sources of information which are also be considered in the implementation of the removal action. Although not enforceable requirements, these documents are important sources of information which EPA and the State of Montana Department of Environmental Quality (MDEQ) may consider, especially in regard to the evaluation of public health and environmental risks; or which will be referred to, as appropriate, in developing cleanup actions.<sup>7</sup> These final ARARs will be set forth as performance standards for any and all removal work plans.

---

<sup>5</sup> 40 CFR §300.5.

<sup>6</sup> CERCLA Compliance with Other Laws Manual, Vol. I, OSWER Directive 9234.1-01, August 8, 1988, p. 1-11.

<sup>7</sup> 40 CFR § 300.400(g)(3); Preamble to the NCP, 55 Fed. Reg. 8744-8746 (March 8, 1990).



Appendix A  
Summary of Federal and State Applicable or Relevant and Appropriate Requirements (ARARs) OU 3 Rainy Creek Floodplain Removal

Statute and Regulatory Citation	ARAR Determination	Description	Comment	Chemical	Location	Action
Federal ARARs						
E.O. 11988 Protection of Floodplains 40 CFR 6.302 and Appendix A	Applicable	Regulates construction in floodplains.	Action is within Rainy Creek floodplain.		✓	
E.O. 11990 Protection of Wetlands 40 CFR 6.302(a) and Appendix A	Applicable	Minimizes adverse impacts on areas designated as wetlands.	Wetlands may be present in area of the removal action.		✓	
Clean Water Act Section 404 33 USC 1251, et seq 40 CFR 230, 231	Applicable	Requires Federal agencies to avoid, to the extent possible, adverse impacts associated with destruction or loss of wetlands. Regulates the discharge of dredged or fill material into waters of U.S.	Regulations are applicable only if removal activities impact wetland areas. Dredge and fill substantive requirements will apply if dredge or fill material is discharged to waters of the U.S.		✓	✓
National Historic Preservation Act, 16 U.S.C. § 470, 40 CFR 6.301(b) 36 CFR 60, 63, 800	Applicable	This statute and implementing regulations require federal agencies to take into account the effect of this response action upon any district, site, building, structure, or object that is included in or eligible for the National Register of Historic Places.	It is not anticipated that any cultural or archeological resources will be found. If any are found, consultation with the State Historic Preservation Office and compliance with the National Historic Preservation Act will be addressed during removal planning.		✓	
Archaeological and Historic Preservation Act, 16 U.S.C. § 469, 40 CFR 6.301(c), 43 CFR 7	Applicable	This statute and implementing regulations establish requirements for the evaluation and preservation of historical and archaeological data, which may be destroyed through alteration of terrain as a result of a federal construction project or a federally licensed activity or program.	Expected to be out of scope of the removal action.		✓	
Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661, et seq., 40 CFR 6.302(g), 33 CFR 320-330	Applicable	Requires coordination with federal and state agencies for federally funded projects to ensure that any modification of any stream or other water body affected by any action authorized or funded by the federal agency provides for adequate protection of fish and wildlife resources.	If the removal action will involve activities that impact wildlife and/or non-game fish, consultation is required with the U.S. Fish and Wildlife Service and the relevant state agency with jurisdiction over wildlife resources.		✓	



Statute and Regulatory Citation	ARAR Determination	Description	Comment	Chemical	Location	Action
Federal ARARs						
Endangered Species Act, 16 U.S.C. § 1531, 40 CFR 6.302, 50 CFR 17 and 402	Applicable	This statute and implementing regulations provide that federal activities not jeopardize the continued existence of any threatened or endangered species. Endangered Species Act, Section 7 requires consultation with the U.S. Fish and Wildlife Service to identify the possible presence of protected species and mitigate potential impacts on such species.	If threatened or endangered species are identified within the removal areas, activities must be designed to conserve the species and their habitat.	✓		
Migratory Bird Treaty Act, 16 U.S.C. §§ 703, et seq., 50 CFR 10.13	Applicable	This requirement establishes a federal responsibility for the protection of the international migratory bird resource and requires continued consultation with the U.S. Fish and Wildlife Service during removal design and removal construction to ensure that the cleanup of the site does not unnecessarily impact migratory birds.	The removal action will be carried out in a manner to avoid adversely affecting migratory bird species, including the bald eagle and including individual birds or their nests.		✓	
CAA, 42 U.S.C. §§ 7401, et seq., 40 CFR 61.150 Note: Section 61.150(a)(4) not delegated to the State per 40 CFR 61.157	Relevant and Appropriate	Standard for waste disposal for manufacturing, fabricating, demolition, renovation and spraying operations. Provides detailed procedures for processing, handling and transporting ACM waste generated during building demolition and renovation (among other sources). The provision allows an alternative emission control and treatment method.	Relevant and appropriate for soil disturbance activities and for asbestos contaminated material that does not meet the strict definition of RACM.			✓
CAA, 40 CFR 61.154 Note: Section 61.154(d) not delegated to the State per 40 CFR 61.157	Relevant and Appropriate	Standard for active waste disposal sites. Provides requirements for off-site disposal sites receiving ACM waste from demolitions and other specific sources. The provision allows an alternative emission control.	It is not expected that there will be offsite shipment of ACM waste as part of this removal action.			✓



Statute and Regulatory Citation	ARAR Determination	Description	Comment	Chemical	Location	Action
State of Montana ARARs						
Montana Asbestos Control Act (MACA), MCA 75-2-501 et seq., and implementing regulations at ARM 17.74.301 through 17.74.368	Applicable/ Relevant and Appropriate/ Other Requirements	The MACA and implementing rules establish standards and procedures for asbestos abatement practices and for accreditation of asbestos-related occupations and control of the work performed by persons in asbestos-related occupations.	Only the portions of the MACA and implementing regulations governing the handling of asbestos containing waste materials are applicable. The removal of vermiculite containing Libby amphibole from the Rainy Creek floodplain meets the statutory definition of an asbestos project. All other provisions (e.g., those governing accreditation, training, etc.) do not meet the requirements of ARARs. The substantive requirements for performance of removal actions and for disposal of asbestos containing materials must be met. These requirements will be addressed as part of the Health and Safety Plan. On-site CERCLA actions do not require a permit.			✓
MACA, MCA 75-2-501 et seq., ARM 17.74.357	Applicable	Establishes air monitoring and visual inspection requirements for asbestos projects, including standards and methods for clearing asbestos projects.	17.74.357(2) and (6) Require visual inspection and air sampling upon completion of an asbestos project. The concentration of asbestos fibers in air clearance samples must be: (a) less than or equal to 0.01 fibers per cubic centimeter of air for each of five samples collected within the work area, if analyzed by PCM. The PCM analysis must be conducted using the NIOSH 7400 or NIOSH 7402 method; or (b) less than or equal to the average concentration of 70 structures per square millimeter for five samples collected within the work area, if analyzed by transmission electron microscopy (TEM). The TEM analysis must be conducted using EPA's interim TEM analytical methods provided in 40 CFR 763, subpart E, appendix A. These requirements will be followed unless an equivalent or more stringent approach is deemed appropriate.			✓
Strip and Underground Mine Reclamation Act, MCA 82-4-371, MCA; ARM 17.24.500-.761	Relevant and Appropriate	Establishes requirements for mine reclamation.	These requirements address soil cover, erosion control, runoff control, establishing appropriate native vegetative cover, soil amendment, fish and wildlife habitat support, and dust control.			✓
Strip and Underground Mine Reclamation Act,	Relevant and Appropriate	All surface drainage from the disturbed area must be addressed with the best technology currently	Sediment control through BTCA must be maintained until the disturbed area is reclaimed			✓



Statute and Regulatory Citation	ARAR Determination	Description	Comment	Chem- ical	Loca- tion	Action
State of Montana ARARs						
ARM 17.24.633		available (BTCA) as that term is defined in ARM 17.24.301(19).	and revegetation requirements are met.			
Clean Air Act of Montana, MCA 75-2-101, <u>et seq.</u> , ARM 17.8.220, ARM 17.8.223	Applicable	Prohibits causing or contributing to concentrations of particulate matter (PM) in ambient air that exceed a 30-day average of 10 grams per square meter or PM-10 concentrations in the ambient air that exceed 150 micrograms/m3 of air on a 24-hour average and 50 micrograms/m3 of air on an annual average.	The removal action may involve significant disturbance of soil. Particulate/dust levels will need to be controlled. Dust control measures will ensure that the PM MAAQS are met.			✓
Clean Air Act of Montana, MCA 75-2-101, <u>et seq.</u> , ARM 17.8.308	Applicable	No person shall cause or authorize the use of any street, road, or parking lot without taking reasonable precautions to control emissions of airborne particulate matter. No person shall operate a construction site or demolition project unless reasonable precautions are taken to control emissions of airborne particulate matter.	This standard applies to use of streets, roads, or parking lots, and to construction projects. Dust control measures will ensure that air standards for airborne particulate matter will not be exceeded during the removal action.			✓
ARM 17.8.220 and ARM 17.24.761 (Strip and Underground Mine Reclamation Act)	Relevant and Appropriate	Specifies measures for controlling fugitive dust during mining and reclamation activities. Such measures include paving, watering, chemically stabilizing, or frequently compacting and scraping roads, promptly removing rock, soil or other dust-forming debris from roads, restricting vehicle speeds, revegetating, mulching, or otherwise stabilizing the surface areas adjoining roads, restricting unauthorized vehicle travel, minimizing the area of disturbed land, and promptly revegetating regarded lands.	Fugitive dust control measures must be met.			✓
Montana Water Quality Act (MWQA), MCA 75-5-101, <u>et seq.</u> , and implementing regulations at ARM 17.30.101	Applicable	General. The Clean Water Act, 33 U.S.C. §1251, <u>et seq.</u> , provides the authority for each state to adopt water quality standards (40 CFR Part 131) designed to protect beneficial uses of each water body and requires each state to designate uses for each water body. The MWQA, 75-5-101, <u>et seq.</u> , MCA establishes requirements for restoring and maintaining quality of surface and ground water. ARM 17.30.601, <u>et seq.</u> , and establishes the Water-Use Classification system. Under ARM 17.30.609, the water-use for the Kootenai River is AB-1. Under	This requirement is triggered in the event the removal action causes discharges to, or impacts, state waters.	✓		



Statute and Regulatory Citation	ARAR Determination	Description	Comment	Chem- ical	Loca- tion	Action
State of Montana ARARs						
		ARM 17.30.602(3), B-1 waters are to be maintained suitable for drinking, culinary, and food processing use after conventional treatment; bathing, swimming and recreation; growth and propagation of salmonid fishes and associated aquatic life, waterfowl, furbearers; and agricultural and industrial water supply. Ditches and certain other bodies of surface water must also meet these requirements. <sup>8</sup>				

<sup>8</sup> As provided under ARM 17.30.602(3), A'surface waters' means any waters on the earth's surface, including but not limited to, streams, lakes, ponds, and reservoirs; and irrigation and drainage systems discharging directly into a stream, lake, pond, reservoir or other surface water. Water bodies used solely for treating, transporting or impounding pollutants shall not be considered surface water.

Statute and Regulatory Citation	ARAR Determination	Description	Comment	Chem- ical	Loca- tion	Action
State of Montana ARARs						
Montana Water Quality Act, MCA 75-5-101, <u>et seq.</u> , ARM 17.30.609	Applicable	Water Use Classifications for the Kootenai River Drainage, all waters except those specifically listed in ARM 17.30.609(1)(a) are classified as B-1; Rainy Creek drainage to the W.R. Grace Company water supply intake (near the mill pond) is A-1; Rainy Creek main stem from the W.R. Grace Company water supply intake to the Kootenai River is C-1; Kootenai River, Carney Creek and Fleetwood Creek are all classified B-1.	This requirement is triggered in the event the removal action causes discharges to, or impacts, state waters.	✓		
Montana Water Quality Act, MCA 75-5-101, <u>et seq.</u> , ARM 17.30.622	Applicable	Waters classified A-1 are, to be maintained suitable for drinking, and culinary and food processing purposes after conventional treatment for removal of natural impurities. These waters must also be maintained suitable for bathing, swimming and recreation, growth and propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers, and for agricultural and industrial water supply purposes. The rule sets forth water quality standards for E. coli, dissolved oxygen, pH, turbidity, temperature, sediment, solids, color, concentrations of carcinogenic, bioconcentrating, toxic, radioactive, nutrient, or harmful parameters may not exceed standards set forth in MDEQ circular DEQ-7. The numerical standard for asbestos in DEQ-7 is based on the MCL for drinking water regulations of 7,000,000 fibers longer than 10 microns/liter. The concentration may not exceed this limit in any sample.	Rainy Creek drainage to the W.R. Grace Company water supply intake (near the mill pond) is A-1. This requirement is triggered in the event the removal action causes discharges to, or impacts, state waters.	✓		



Statute and Regulatory Citation	ARAR Determination	Description	Comment	Chem- ical	Loca- tion	Action
State of Montana ARARs						
Montana Water Quality Act, MCA 75-5-101, et seq., ARM 17.30.623	Applicable	Under ARM 17.30.623(1), waters classified B-1 are suitable for drinking, culinary and food processing purposes. These waters are also to be maintained suitable for bathing, swimming and recreation, growth and propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers, and use for agricultural and industrial purposes. The rule sets forth water quality standards for E. coli, dissolved oxygen must not be reduced below standards set forth in DEQ-7; pH, turbidity, temperature, sediment, solids, color, concentrations of carcinogenic, bioconcentrating, toxic or harmful parameters may not exceed standards set forth in MDEQ circular DEQ-7. The numerical standard for asbestos, is based on the MCL for drinking water regulations of 7,000,000 fibers longer than 10 microns/liter. The concentration may not exceed this limit in any sample.	Kootenai River, Carney Creek and Fleetwood Creek are all classified B-1. This requirement is triggered in the event the removal action causes discharges to, or impacts, state waters.	✓		
Montana Water Quality Act, MCA 75-5-101, et seq., ARM 17.30.626	Applicable	Waters classified C-1 are to be maintained suitable for bathing, swimming and recreation, growth and propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers, and use for agricultural and industrial purposes. The rule sets forth water quality standards for E. coli, dissolved oxygen must not be reduced below standards set forth in DEQ-7; pH, turbidity, temperature, sediment, solids, color, concentrations of carcinogenic, bioconcentrating, toxic or harmful parameters may not exceed standards set forth in MDEQ circular DEQ-7. The numeric standard for asbestos is based on the MCL for drinking water regulations of 7,000,000 fibers longer than 10 microns/liter. The concentration may not exceed this limit in any sample.	Rainy Creek main stem from the W.R. Grace Company water supply intake to the Kootenai River is classified C-1. This requirement is triggered in the event the removal action causes discharges to, or impacts, state waters.	✓		



Statute and Regulatory Citation	ARAR Determination	Description	Comment	Chem- ical	Loca- tion	Action
State of Montana ARARs						
Montana Water Quality Act, MCA 75-5-101, <u>et seq.</u> , ARM 17.30.637	Applicable	General Prohibitions No waste may be discharged and no activities conducted which, either alone or in combination with other waste activities, will cause violation of surface water quality standards. Surface waters must be free of substances attributable to industrial practices or other discharges that will: (a) settle to form objectionable sludge deposits or emulsions beneath the surface of the water or upon adjoining shorelines; (b) create floating debris, scum, a visible oil film (or be present in concentrations at or in excess of 10 milligrams per liter) or globules of grease or other floating materials; (c) produce odors, colors or other conditions which create a nuisance or render undesirable tastes to fish flesh or make fish inedible; (d) create concentrations or combinations of materials which are toxic or harmful to human, animal, plant or aquatic life; or (e) create conditions which produce undesirable aquatic life. Leaching pads, tailings ponds, or water or waste or product holding facilities must be located, constructed, operated and maintained in such a manner and of such materials to prevent any discharge, seepage, drainage, infiltration, or flow which may result in pollution of state waters, and a monitoring system may be required to ensure such compliance.	The removal action must not adversely impact surface water. Excavation will take place within the Rainy Creek floodplain. Accidental release of asbestos-containing soils into surface water must be prevented.			✓
Montana Water Quality Act, MCA 75-5-605	Applicable	It is unlawful to cause pollution of any state waters, or to place or cause to be placed any wastes where it will cause pollution of state waters.	Accidental release of asbestos-containing soils into surface water must be prevented.			✓
Montana Water Quality Act, MCA 75-5-101, <u>et seq.</u> , ARM 17.30.701 – 17.30.718	Applicable	Nondegradation of water quality – existing and anticipated uses of surface water and water quality necessary to support those uses must be maintained and protected.	Existing uses of state waters and the level of water quality necessary to protect the uses must be maintained and protected. Section 75-5-317, MCA, provides an exemption from nondegradation requirements which allows changes of existing water quality resulting from an emergency action or reclamation that is designed to protect the public health or the environment and that is approved, authorized, or required by the department. Degradation meeting these requirements may be considered nonsignificant.			✓



Statute and Regulatory Citation	ARAR Determination	Description	Comment	Chem- ical	Loca- tion	Action
State of Montana ARARs						
ARM 17.30.601, <u>et seq.</u> , and ARM 17.30.1301, <u>et</u> <u>seq.</u> , including ARM 17.30.1341	Applicable	DEQ has issued general storm water permits for certain activities. The substantive requirements of the General Permit for Storm Water Discharge Associated with Construction Activity, Permit No. MTR100000 (April 16, 2007) will apply to removal actions at OU-3.	The general permit requires best management practices to prevent discharges which have a reasonable likelihood of adversely affecting human health or the environment.			✓
Montana Natural Streambed and Land Preservation Act of 1975, MCA 75-7-101, <u>et seq.</u> ARM 36.2.401, <u>et seq.</u>	Applicable/ Relevant and Appropriate	Establishes minimum standards if a project alters or affects a streambed, including any channel change, new diversion, riprap or other stream-bank protection project, jetty, new dam or reservoir or other commercial, industrial or residential development.	The remedial action may require stream-bank protection. All disturbed areas must be managed during construction and reclaimed after construction to minimize erosion. Temporary structures used during construction must be designed to handle high flows reasonably anticipated during the construction period. Temporary structures must be completely removed from the stream channel at the conclusion of construction, and the area must be restored to a natural or stable condition. Channel alterations must be designed to retain original stream length or otherwise provide hydrologic stability. Streambank vegetation must be protected, except where removal of such vegetation is necessary for the completion of the project. When removal of vegetation is necessary, it must be kept to a minimum. Riprap, rock, and substantive provisions of MCA 87-5-502 and 87-5-504 other material used in a project must be of adequate size, shape, and density and must be properly placed to protect the streambank from erosion. The placement of road fill material in a stream, the placement of debris or other materials in a stream where it can erode or float into the stream, projects that permanently prevent fish migration, operation of construction equipment in a stream, and excavation of streambed gravels are prohibited, unless specifically authorized. Response actions must also protect the use of water for any useful or beneficial purpose. See Section 75-7-102, MCA.		✓	



Statute and Regulatory Citation	ARAR Determination	Description	Comment	Chemical	Location	Action
State of Montana ARARs						
Substantive provisions of MCA 87-5-502 and 87-5-504	Relevant and Appropriate	Provides that a state agency or subdivision shall not construct, modify, operate, maintain or fail to maintain any construction project or hydraulic project which may or will obstruct, damage, diminish, destroy, change, modify, or vary the natural existing shape and form of any stream or its banks or tributaries in a manner that will adversely affect any fish or game habitat.	While the administrative / procedural requirements, including the consent and approval requirements set forth in these statutes and regulations are not ARARs, consultation with the Montana Department of Fish, Wildlife and Parks, and any conservation district or board of county commissioners (or consolidated city/county government) is encouraged during the design and implementation of the removal action at OU3, to assist in the evaluation of impacts of the project on fish and wildlife habitat.		✓	
Montana Floodplain and Floodway Management Act, MCA 76-5-401 <u>et seq.</u> , and implementing regulations, ARM 36.15.601 <u>et seq.</u>	Applicable/ Relevant and Appropriate	The Floodplain and Floodway Management Act and regulations specify types of uses and structures that are allowed or prohibited in the designated 100-year floodway <sup>9</sup> and floodplain. <sup>10</sup>	These standards are applicable to all actions within the Rainy Creek, Carney Creek and Fleetwood Creek floodplain. These regulations specify factors that must be considered in allowing diversions of the stream, changes in place of diversion of the stream, flood control works, new construction or alteration of artificial obstructions, or any other nonconforming use within the floodplain or floodway. Many of these requirements are set forth as factors that must be considered in determining whether a permit can be issued for certain obstructions or uses. While permit requirements are not directly applicable to remedial actions conducted entirely on site, the substantive criteria used to determine whether a proposed obstruction or use is permissible within the floodway or floodplain are applicable standards.		✓	
Montana Floodplain and Floodway Management	Relevant and Appropriate	These regulations list prohibited uses within the floodway including: a structure or excavation that will cause water to be diverted from the established	These standards are applicable to all actions within the Rainy Creek, Carney Creek and Fleetwood Creek floodplain.		✓	

<sup>9</sup> The "floodway" is the channel of a watercourse or drainway and those portions of the floodplain adjoining the channel that are reasonably required to carry and discharge the floodwater of the watercourse or drainway. ARM 36.15.101(13).

<sup>10</sup> The "floodplain" is the area adjoining the watercourse or drainway that would be covered by the floodwater of a base (100-year) flood except for sheetflood areas that receive less than one foot of water per occurrence. The floodplain consists of the floodway and flood fringe. ARM 36.15.101(11).



Statute and Regulatory Citation	ARAR Determination	Description	Comment	Chem- ical	Loca- tion	Action
State of Montana ARARs						
Act, MCA 76-5-403, ARM 36.15.605		floodway, cause erosion, obstruct the natural flow of water, or reduce the carrying capacity of the floodway; solid and hazardous waste disposal; and storage of hazardous, toxic, flammable, or explosive materials.				
Montana Endangered Species Act MCA 87-5-106, 107, and 111 ARM 12.5.201	Applicable	Endangered species must be protected in order to maintain and, to the greatest extent possible, enhance their numbers. These sections list endangered species, prohibited acts, and penalties. See also MCA 87-5-201 (applicable), concerning protection of wild birds, nests, and eggs.	If State threatened or endangered species are identified within the removal areas, activities must be designed to conserve the species and their habitat.		✓	
Montana Antiquities Act, MCA 22-3-421, <u>et seq.</u>	Relevant and Appropriate	The Montana Antiquities Act addresses the responsibilities of State agencies regarding historic and prehistoric sites including buildings, structures, paleontological sites, archaeological sites on state owned lands. Each State agency is responsible for establishing rules regarding historic resources under their jurisdiction which address National Register eligibility, appropriate permitting procedures and other historic preservation goals. The State Historic Preservation Office maintains information related to the responsibilities of State Agencies under the Antiquities Act.	The Montana Antiquities Act requires avoidance or mitigation of impacts to heritage property or paleontological remains.		✓	
Montana Human Skeletal Remains and Burial Site Protection Act (1991), MCA 22-3-801, <u>et seq.</u>	Applicable	The Human Skeletal Remains and Burial Site Protection Act is the result of years of work by Montana Tribes, State agencies and organizations interested in ensuring that all graves within the State of Montana are adequately protected.	If human skeletal remains or burial sites are encountered during removal activities within OU3, then these requirements will be applicable.		✓	
Noxious Weeds, MCA 7- 22-2101, <u>et seq.</u> and ARM 4.5.201, <u>et seq.</u>	Applicable	Designated noxious weeds are listed in ARM 4.5.206 through 4.5.210 and must be managed consistent with weed management criteria developed under § 7-22-2109(2)(b), MCA.	The substantive requirements set forth in these regulations are applicable where disturbed areas are seeded, planted, or otherwise managed to reestablish a cover of beneficial plants.			✓



# Acronyms

ARARS	Applicable or Relevant and Appropriate Requirements
ARM	Administrative Rules of Montana
BMP	Best Management Practices
CAA	Clean Air Act
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
MCA	Montana Code Annotated
NESHAP	National Emission Standards for Hazardous Air Pollutants
NHPA	National Historic Preservation Act
NRCS	Natural Resources Conservation Service
OSHA	Occupational Safety and Health Administration
RACM	Regulated Asbestos Containing Material
RCRA	Resource Conservation and Recovery Act
SHPO	State Historic Preservation Office
TSCA	Toxic Substances Control Act
U.S.C	United States Code